

TRANSPORTATION REPORT

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To: The Montana Wheat & Barley Committee

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Shipper Complaints Continue To Be Filed At Record Levels

While S2889 - Chairman Rockefeller's STB Reauthorization and shipper reforms awaits Senate approval, the shipper complaints are coming into the Surface Transportation Board at a record pace. The railroads and the STB in D.C. are touting to Congress about their mediation processes and how effective they are - but the shippers are lining up with complaints.

RATE COMPLAINTS

There are a host of cases in front of the STB challenging rail rates on specific commodity hauls - mostly coal and chemical shipments. Besides Montana, complainants include Seminole Electric vs. CSX Transportation and NRG Power Marketing vs. CSX, both over coal charges; Total Petrochemical vs. CSX; and Arkansas Electric Power Cooperative vs. BNSF and UP. Western Fuels case and victory over BNSF continues to be on appeal, and Entergy Arkansas and UP over coal shipments. After the DuPont rate victory two years ago at the STB and the Western Fuels victory over excess coal rates by the BNSF last year coupled with the Congressional view that things need to change at the STB and become more pro-active for the shipper, there may be a growing trend to challenge rates. In June chemical shipper M&G Polymers USA filed against CSX a rate complaint. Is this a growing trend? CSX has been jacking up its rates for the last three years. The Montana Attorney General on Thursday (July 8, 2010) filed a complaint on BNSF's changing from 52 car to the 48 car maximum on non-shuttle trains out of Montana.

DuPont's successful challenge of CSX rates in 2008 and 2009 at the STB appear to have given shippers increased confidence to bring rate cases against the rails. They can win with these actions.

MILEAGE EQUALIZATION ON SHIPPER OWNED CARS

There are a host of cases 'mileage equalization' fees assessed by the railroads on shipper-owned tank cars when different and longer routes is used to get the equipment back to the point of origin. Many times these out of route return hauls are routed by the railroads to provide a better balance to their system movements. Complainants include Cargill, Exxon, Mobil and other shippers - more joining all of the time.

RAILROAD FUEL SURCHARGES

Some complaints target railroad fuel surcharges, underscoring that the STB's past efforts to deal with that issue on certain cargoes were not enough to erase customer concerns. Cargill vs BNSF and others.

RAIL DUST IN THE POWER RIVER BASIN - AND WHO IS GOING TO CLEAN IT UP

There is even a fight brewing over dust; some coal customers are fighting efforts by BNSF Railway and Union Pacific Railroad to clamp down on the dust that rolls off loaded coal hopper cars out of the Power River Basin mines in Wyoming. The dust builds up in the trackbed, the railroads say, and eventually dislodges track. Carriers (railroads) are spending a significant amount of money to dig out the dust to avoid a repeat of two major derailments in 2005 on the nation's busiest coal line. Meanwhile, the shippers maintain that the revenues earned on these lines are more than adequate to afford the railroads to do the maintenance required to keep the tracks clean and that lack of routine maintenance on some of the busiest tracks in the nation - was a contributing factor to the derailments that occurred in the southern Power River basin. The railroads want the utility shippers to pay for the cleanup and increased maintenance - thus the electric consumers - while the utility shippers are resisting the move - while they are paying the some of the highest freight rates they ever have.

It is interesting to note that most of these shipper cases were filed this year - as Congress moved to STB Reauthorization and toughing oversight of the railroads and increasing competition among the few major railroads that are left in the U.S.